

MESSAGE
to the
LEGISLATURE

BY
GOVERNOR
EDMUND G.
BROWN

Relating to

The abolition of the
DEATH PENALTY
in CALIFORNIA

WEDNESDAY, MARCH 2nd, 1960

As an act of public conscience and from the experience of over a decade and a half in law enforcement work, I ask the Legislature to abolish the death penalty in California. There are powerful and compelling reasons why this should be done. It is not based on maudlin sympathy for the criminal and depraved. And although I believe the death penalty constitutes an affront to human dignity and brutalizes and degrades society, I do not merely for these reasons urge this course for our State.

I have reached this momentous resolution after 16 years of careful, intimate and personal experience with the application of the death penalty in this State. This experience embraces seven years as District Attorney of San Francisco, eight years as Attorney General of this State, and now 14 months as Governor. I have had a day-to-day, first-hand familiarity with crime and punishment surpassed by very few.

Society has both the right and moral duty to protect itself against its enemies. This natural and prehistoric axiom has never successfully been refuted. If by ordered death, society is really protected and our homes and institutions guarded, then even the most extreme of all penalties can be justified.

DEATH PENALTY A FAILURE

But the naked, simple fact is that the death penalty has been a gross failure. Beyond its horror and incivility, it has neither protected the innocent nor deterred the wicked. The recurrent spectacle of publicly sanctioned killing has cheapened human life and dignity without the redeeming grace which comes from justice meted out swiftly, evenly, humanely.

The death penalty is invoked too randomly, too irregularly, too unpredictably, and too tardily to be defended as an effective example warning away wrong-doers.

In California, for example, in 1955, there were 417 homicides. But only 52 defendants were convicted of first degree murder. And only 8, or 2%, were in fact sentenced to death. There can be no meaningful exemplary value in a punishment the incidence of which is but one to 50.

Nor is the death penalty to be explained as society's ultimate weapon of desperation against the unregenerate and perverse. The study of executions over a 15-year period produces the startling facts that of 110 condemned cases, 49% of those executed had never previously suffered a prior felony; that 75% of them came from families which had been broken by divorce, separation or otherwise when the condemned was still in his teens.

NO DATA TO SUPPORT PENALTY

Again I say, that if this most drastic of sanctions could be said substantially to serve the ends of legal justice by adding to our safety and security, it would deserve some greater place in our respect. But no available data from any place or time that I have been able to find from research over many years gives support to the grand argument that the presence or absence of the death penalty exerts any substantial effect upon the incidence of homicide. Indeed, the report of the British Royal Commission on Capital Punishment, one of the most universally respected and objective studies ever made on the subject, is that there is no clear evidence that the abolition of capital punishment has ever led to an increase in the homicide rate. The Royal Commission concluded, as has nearly every other scientific survey of the problem, that factors other than the presence or absence of the death penalty account for the homicide rate in any given area.

Specifically, the death penalty has been abolished in nine states (Minnesota, Wisconsin, Michigan, Rhode Island, North Dakota, Maine, Alaska and Hawaii) and in 30 foreign countries (as Sweden, Belgium, Norway, Italy, Western Germany, Puerto Rico, Austria and 22 others).

ABOLITION BRINGS NO INCREASE

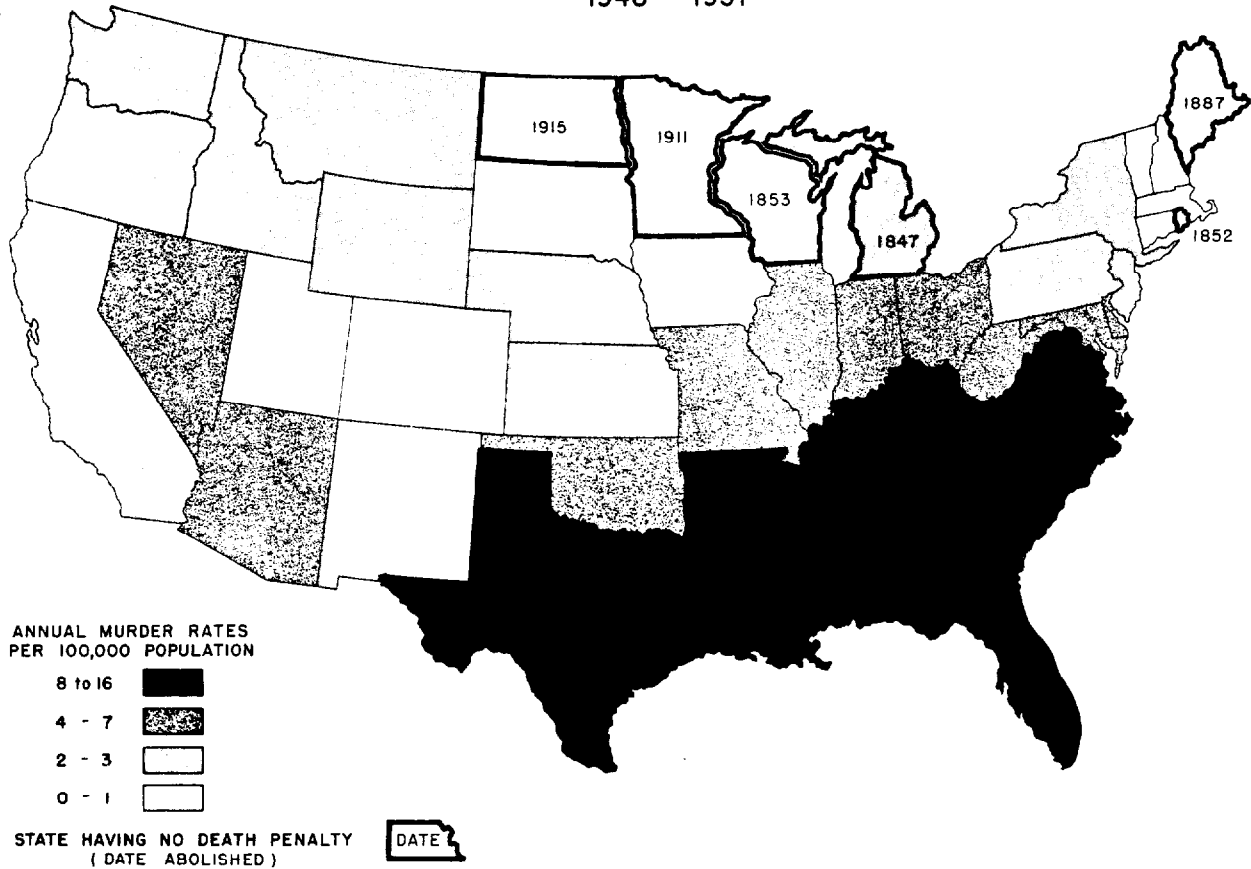
In none of these states has the homicide rate increased, and indeed, in comparison with other states their rates seem somewhat lower. And these rates are lower not because of the death penalty but because of particular social organization, composition of population, economic and political conditions.

I have attached to this document a map of the

STATE MURDER RATE

ANNUAL AVERAGE OF 10 YEAR PERIOD

1948 - 1957



United States in which the various states are shaded to indicate their murder rate over a 10-year period from 1948 through 1957, compiled by the California Department of Corrections. It shows graphically that the states without capital punishment along with several others which do retain the death penalty have the least incidence of homicides. And in striking contrast, 12 southern states have the highest homicide rate of all.

This last fact points up the most glaring weakness of all, and that is that, no matter how efficient and fair the death penalty may seem in theory, in actual practice in California as elsewhere it is pri-

marily inflicted upon the weak, the poor, the ignorant, and against racial minorities. In California, and in the Nation as a whole, the overwhelming majority of those executed are psychotic or near-psychotic, alcoholic, mentally defective, or otherwise demonstrably mentally unstable. In the experience of former Wardens Lewis Lawes of Sing Sing and Clinton P. Duffy of San Quentin, seldom are those with funds or prestige convicted of capital offenses, and even more seldom are they executed.

The shading of the attached map shows the disproportionate rate of homicides in the southern states, all of which zealously apply the death penalty.

MOSTLY MINORITIES

As shocking as may be the statistics in our deep South where the most extensive use of the death penalty is made and against the most defenseless and downtrodden of the population, the Negroes, let it be remembered too that in California, in the 15-year period ending in 1953, covering 110 executions, 30% were of Mexicans and Negroes, more than double the combined population percentages of these two groups at the time. Indeed, only last year, 1959, out of 48 executions in the United States, 21 only were whites, while 27 were of Negroes. These figures are not mine. I tender them to you for critical examination and comparison. But I believe you will find them compelling evidence of the gross unfairness and social injustice which has characterized the application of the death penalty.

And finally, I bring to your attention the lessons I have learned here, in California, in 16 years of public service, but especially since I became Governor. Last January I inaugurated the practice of personally conducting executive clemency hearings in every death case upon request. Every such case is carefully investigated and comes to me complete with transcripts, investigative reports, and up-to-date psychological, neuropsychiatric, and sociological evaluations.

SENSELESS OR INSANE

These are all hard cases to review and consider. There have been 19 of them these past 14 months. They present a dreary procession of sordid, senseless violence, perpetrated by the wandering outcasts of the state. Not a single one of these 19 accomplished a pittance of material gain. Nine of the 19 suffered obvious and deep mental imbalance. In the only three cases where actual murder was entertained by conscious design, sickness of mind was clinically established to have existed for many years. All of them were products of the hinterlands of social, economic, and educational disadvantage.

Six of these I have commuted to life imprisonment without possibility of parole. Eight of them we have given unto the executioner: miserable, bewildered sacrifices. We have taken their lives. But I have seen in the files and transcripts, in the books

which we have now closed upon them, that who they were and where they were, played just as big a part in their ultimate condemnation as what they did. And I saw also that, but for just the slightest twist of circumstances, these 19 might have received a term of years as did the other 98% of those who killed.

I have studied their cases and I know that not a single execution has ever halted the sale of a single gun or restrained a moment's blind rage.

And in these cases, too, there looms always the ugly chance that innocent men may be condemned, however careful are our courts and juries. Our judicial system gives us pride, but tempered by the realization that mankind is subject to error.

BUT FOR THE GRACE OF GOD—

And this to me has been no idle fear. Within six months after I became Governor there came to me the duty to pardon a man who had, despite the care of court and counsel of his choice, been convicted of the willful slaying of his wife.

This man, John Henry Fry by name, admittedly under the influence of alcohol at the time of the crime, stood convicted by the force of circumstances which he could not explain. Happily, he was not executed. And last June 16th we pardoned him for that which he had never done.

Here, but for the grace of God, there might now be on our hands the blood of a man, poor, ignorant, friendless—and innocent.

I issue this call for consideration of the death penalty as a matter of conviction and conscience.

It is a Governor's task to present to the Legislature those matters on which he feels action is important and urgent, and to make clear his position and the principles for which he stands.

The Legislature, directly representing the people, has a wisdom of its own and an independent function for which I have the greatest respect.

STRUGGLE FOR DIGNITY

I am a realist and know the great resistance to what I propose. But public leadership must face up to the humane as well as economic and social issues of our communities. And it is not enough for those

charged with public responsibilities to be content to cope with just the immediate and readily attainable—the basic and long range values of our society must also constantly be brought into fuller reality. I believe the entire history of our civilization is a struggle to bring about a greater measure of humanity, compassion and dignity among us. I believe those qualities will be the greater when the action proposed here is achieved—and not just for the wretches whose execution is changed to life imprisonment, but for each of us.

Finally, I urge that the deliberations on this profound issue, whatever the outcome, be conducted with reason and restraint. There is already too much senseless violence and vituperation in our lives. Conscientious people may differ, but the ultimate issue here is clear. Can law and order be maintained as well or better if capital punishment is abolished?

Whatever the decision, I urge every one of us to search his conscience carefully and fully. In the final outcome of that I have full confidence.